* **HIGH COURT OF DELHI : NEW DELHI**

+ ITA No. 1678/2006 with 1679 & 1680/2006

% Judgment reserved on: 14th March, 2007

Judgment delivered on: 30th March, 2007

M/S. SAHKAR ENTERPRISES P.LTD.
F-14, CONNAUGHT PLACE,
NEW DELHI-110001. ..... Appellant

Through:Mr.P.N.Monga, Advocate.

Vs.

COMMISSIONER OF INCOME TAX
NEW DELHI ..... Respondent

Through:Mr.R.D.Jolly, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

By this common judgment, three appeals bearing Nos. 1678, 1679 & 1680/2006 filed by the Assessee are being disposed of since common question of law is involved.

2. All the three appeals arise out of the decision dated 5th May, 2006 passed by Income Tax Appellate Tribunal (hereinafter referred to as Tribunal) for the assessment year 1993-94 in ITA No.2398/Del/97, assessment year 1990-91 and 1991-92 in ITA No. 1652 & 1653/Del/2000.

3. The facts in brief are that originally the Assessee company had been promoted by Shri.Om Prakash Jain and the entire share holding of the company was held by his family members. In 1989, the control and management of this company was transferred to Shri Narender Anand and his members who had purchased all the shares of the company. At the time of the purchase of the shares by the Anand Family, the company was having a fully constructed building at 12-14/8, Doctor's Lane, New Delhi. After taking over, some more expenses were incurred for alteration and modification of the flats and these flats were sold to

different parties in the financial year 1989-90, 1990-91 and 1992-93. However, the Assessee had not filed return of income for these years.

4. A search was conducted in the case of Assessee in the year 1992 and during the search only it came to the notice of the Revenue that the company had sold many of the flats. Some incriminating documents were also seized during the search showing under statement of sale consideration in the garb of shares. The Assessing Officer, therefore, made addition on this account in assessment year 1993-94 and based on the material gathered in the assessment year 1993-94. Assessments for assessment year 1990-91 and 1991-92 were reopened and in the reassessment for these years, similar additions were made.

5. Being dissatisfied, the Assessee filed appeals against the order of the Assessing Officer before the Commissioner of Income Tax (Appeals) who confirmed the additions.

6. Aggrieved by the decision of the Commissioner of Income Tax (Appeals), the Assessee filed appeals before the Tribunal for all the three years and appeals of the Assessee were dismissed.

7. It has been argued by the learned counsel for the Assessee that at the time of the acquisition of the company by the Anand family, the payment were made towards book value of the assets as well as towards the shares and the Assessee had followed the same system at the time of sale of flats and as such the Assessing Officer was not justified in rejecting the claim. There is nothing on record to show that the Assessee had received any amount above the consideration declared by the Assessee and the Assessee had not been confronted with the inquiry report of the Assessing Officer and as such the addition made, therefore, is not justified.

8. On the other hand, it has been argued by learned counsel for the Revenue that the documents found during the search clearly shows that there was only one agreement for the sale of flats, which was also confirmed by some of the purchasers on inquiry and it is a clear cut case of under statement of sale consideration.

9. It may be noticed from the assessment order that the company had sold several flats during the accounting period relevant to the assessment year 1993-94 and in

respect of each of the flats sold, the Assessee had executed two separate agreements. The first agreement was for a consideration charged for the sale of the space/flat in the building and other agreement was for the sale of the shares of this company at the rate of Rs.6,030/- per share of face value of Rs.100/- to the buyer of this very space/flat. The sale of share is stated to be an integral part of the first agreement for the sale of space/flat. The total consideration in most of the cases had been paid to the company even in respect of the stated consideration for the sale of the shares, which were held not by the Assessee-company but by Shri Narender Anand and his family members.

10. The Assessing Officer examined copies of some of the agreements for sale of the flats executed during financial year 1989-90 and 1990-91 which were seized during the course of search. It was noted by the Assessing Officer that these flats were sold without any condition of purchase of shares of this company held by Sh.Narender Anand and his family members. In all these agreements, the stated consideration was only in respect of sale/purchase of flats. In respect of these flats, letters were also found which were

issued to purchasers by the Assessee-company duly signed by Sh.Narender Anand stating the total consideration in respect of sale of the flats and mentioning the super covered area. There was absolutely no mention of any transfer of shares or any consideration having been made by the buyers in the transfer of the shares. The entire sale consideration was distinctly shown as the sale price of the flats.

11. It is also borne out from the record that the Assessing Officer issued inquiry letters to various buyers of flats which were replied by some of the flat owners, who in their replies, clearly indicated that they had paid entire sale consideration only for acquiring the flats and none for acquiring the shares of the company.

12. The relevant findings of the Tribunal in this regard are as under:-

> "We have perused the records and considered the rival contentions carefully. The assessee company owned flats in a building located in a very posh area in Delhi. The sale consideration of flats had been been bifurcated by the assessee in two parts: one against the sale of shares of the company and the other against the sale consideration of flats. The assessee was not

holding the shares, which in fact were owned by the individual members of the Anand Family. The sale consideration in respect of flats owned by the company is, therefore, not linked to the sale of shares. How the consideration had been paid by the Anand family at the time of acquisition of company in 1989 is not relevant while considering the income of the company from the sale of the flats. The shares were shown to have been sold at a high price of Rs.6,030/- per share against the face value of Rs.100/- and no basis had been given of such high price. On the contrary, the material gathered during the search showed that the assessee had sold flats at a price of Rs.850/- to Rs.1050/- per sft. In the year 1990 and 1991, which were also confirmed on inquiry from the individual buyers that the entire consideration had been paid only against the sale of flats. The entire consideration including the part stated to be related to share had been received by the company and it was only much later that the part of sale consideration was passed on to the shareholders i.e. Shri Anand and his family members and the plea was raised that major part was against sale of shares. The claim of the Learned AR that the assessee had not been confronted with the finding, is also not correct as the order of the A.O. shows that the assessee had been confronted with the material gathered. It is also noted that this point had not been specifically challenged by the assessee before CIT(A). We, therefore, find no force in such claim made now. We also find no force in the claim of the Learned AR that there was no material to show under statement of sale consideration of flats. The

> material found during search in relation to Assessment Year 1990-91 and 1991-92 clearly showed that the flats were sold at rates from Rs.850/- to Rs.1050/- per sft. and the basement @ Rs.500/- sft. There was therefore, no reason for the price to be lower in Assessment Year 1993-94. The assessee has also not produced any evidence to show that the price in the subsequent year was depressed. On the contrary, the material gathered by the authorities below clearly show that the assessee had tried to divert the sale consideration in the garb of sale of shares without any justifiable reason. We, therefore, see no infirmity in the order of CIT(A) and the same is confirmed."

13. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

14. Moreover, since, there are concurrent findings of facts by three statutory authorities, we do not find any reason to disagree with their findings and as such no substantial question of law arises for our consideration.

15. Accordingly, the present appeals filed by the Assessee are, hereby, dismissed.

(V. B. GUPTA)
JUDGE

March 30, 2007
bisht

(MADAN B. LOKUR)
JUDGE